

**Notice of Allowability**

Application No.

09/731,133

Examiner

Timothy J Henn

Applicant(s)

ITO ET AL.

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 08 October 2004.
2. ☒ The allowed claim(s) is/are 2,3,5,7,8,10,12,13,15,17,18 and 20.
3. ☒ The drawings filed on 06 December 2000 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |                                                                                                                     |                                                                                        |
|---------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)                                                    | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|                                                                                                                     | 9. <input type="checkbox"/> Other _____.                                               |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendments made to the specification and title are acceptable and overcome the previous objections to the specification and title, these objections are therefore withdrawn.

### ***Response to Arguments***

2. Applicant's arguments, see amendment, filed 08 October 2004, with respect to the claims have been fully considered and are persuasive. The rejection of claims 2, 3, 5, 7, 8, 10, 12, 13, 15, 17, 18 and 20 have been withdrawn.

### ***Allowable Subject Matter***

3. Claims 2, 3, 5, 7, 8, 10, 12, 13, 15, 17, 18 and 20 are allowed.

4. The following is an examiner's statement of reasons for allowance: Regarding claims 2, 3, 5, 7, 8, 10, 12, 13, 15, 17, 18 and 20 the prior art does not teach or fairly suggest an apparatus or method which emits an irradiation wave for irradiating a subject while changing the emitting angle of the subject, detects the incident angle of the reflected wave, determines based on the emitting angle and the incident angle whether or not the subject is a subject for which focus should be adjusted, adjusts the focus on the subjected when it is determined that the subject is a subject for which the focus should be adjusted wherein the determining means stores sampling data of the emitting

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and incident angles and correspondence data of the emitting and incident angle as claimed.

Although there exist prior art devices which change an emitting angle of an irradiation wave (see for example: Johnson (US 4,470,681), Nonaka et al. (US 5,264,892)), these devices do not store the emitting angle, incident angle and correspondence data between the emitting and incident angle, and further do not determine whether the subject is a subject for which focus should be adjusted based on the emitting and incident angles as claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J Henn whose telephone number is (571) 272-7310. The examiner can normally be reached on M-F 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wendy R Garber can be reached on (571) 272-7308. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TJH  
2/19/2005

  
WENDY R. GARBER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600